

Application No. 10/644,122

REMARKS**Introduction**

The present application includes claims 1-30, wherein claims 1, 7, 10, 11, 15, 18, 21, and 27 are presented in independent form and claims 16 and 17 are withdrawn from consideration. The Examiner indicated on Office Action Summary sheet of the current office action that claim 26 was withdrawn from consideration. This is the first Office Action indicating claim 26 was withdrawn and further, the Examiner gave no explanation for withdrawing claim 26. If the Examiner believes that withdrawing claim 26 is required, Applicants respectfully request the Examiner to provide a particular reason why withdrawal is required. Applicants respectfully disagree that claim 26 should be withdrawn from consideration. With this amendment, claims 1-3, 5, 7, 10, 12, 13, 15, 16, 18, 19 and 21 have been amended, claims 11 and 14 have been cancelled, and new claim 31 has been added. Therefore, after this Amendment, claims 1-31 are pending.

Applicants acknowledge with appreciation the Examiner's indication that claim 30 contains allowable subject matter. Reconsideration and reversal of the rejections presented in the Office Action dated June 9, 2005 is respectfully requested in light of the following amendments and arguments.

§ 112 Second Paragraph

Claims 1-15 and 18-25 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicants have amended claims 1-3, 5, 7, 10, 12, 13, 15, 16, 18, 19 and 21. Therefore, Applicants believe this rejection is now moot.

Prior Art Rejections**§ 102(b) in view of Fattore**

Claims 1-15 and 18-25 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,767,419 to Fattore (hereinafter "Fattore").

Claim 1

At a minimum, Fattore does not disclose "an articulating deck including a first deck section and a second deck section able to be articulated relative to the first deck section" as required by amended claim 1.

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Therefore, Applicants believe that amended claim 1 is in condition for allowance with respect to Fattore. Removal of the rejection and allowance of claim 1 is respectfully requested. If the Examiner should disagree with the Applicants' arguments, the Examiner is asked to kindly point out with particularity where the limitation is expressly disclosed.

Claims 2-6, 8 and 9

Claims 2-6, 8 and 9 depend from claim 1. In that claim 1 is believed to be allowable, claims 2-6, 8 and 9 are also believed to be allowable. Removal of the rejections and allowance of claims 2-6, 8 and 9 is respectfully requested.

Claim 7

At a minimum, Fattore does not disclose "wherein the body is able to flex so as to alter the size of the notches when the siderail moves during articulation of the articulatable patient support" as required by amended claim 7.

Therefore, Applicants believe that amended claim 7 is in condition for allowance with respect to Fattore. Removal of the rejection and allowance of claim 7 is respectfully requested. If the Examiner should disagree with the Applicants' arguments, the Examiner is asked to kindly point out with particularity where the limitation is expressly disclosed.

Claim 10

At a minimum, Fattore does not disclose "when the siderail moves during articulation of the articulatable patient support" as required by amended claim 10.

Therefore, Applicants believe that amended claim 10 is in condition for allowance with respect to Fattore. Removal of the rejection and allowance of claim 10 is respectfully requested. If the Examiner should disagree with the Applicants' arguments, the Examiner is asked to kindly point out with particularity where the limitation is expressly disclosed.

Claim 15

At a minimum, Fattore does not disclose "the body being able to flex so as to alter the size of the notches when the siderail moves during articulation of the articulatable patient support" as required by amended claim 15.

Therefore, Applicants believe that amended claim 15 is in condition for allowance with respect to Fattore. Removal of the rejection and allowance of claim 15 is respectfully requested. If the Examiner should disagree with the Applicants' arguments, the Examiner is asked to kindly point out with particularity where the limitation is expressly disclosed.

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Claim 18

At a minimum, Fattore does not disclose "a siderail covering having a flexible body adaptable to be coupled to a siderail coupled to a patient support having an articulatable deck" as required by amended claim 18.

Therefore, Applicants believe that amended claim 18 is in condition for allowance with respect to Fattore. Removal of the rejection and allowance of claim 18 is respectfully requested. If the Examiner should disagree with the Applicants' arguments, the Examiner is asked to kindly point out with particularity where the limitation is expressly disclosed.

Claim 21

At a minimum, Fattore does not disclose "an articulating deck including a first deck section and a second deck section able to be articulated relative to the first deck section" as required by amended claim 21.

Therefore, Applicants believe that amended claim 21 is in condition for allowance with respect to Fattore. Removal of the rejection and allowance of claim 21 is respectfully requested. If the Examiner should disagree with the Applicants' arguments, the Examiner is asked to kindly point out with particularity where the limitation is expressly disclosed.

Claims 22-26

Claims 22-26 depend from claim 21. In that claim 21 is believed to be allowable, claims 22-26 are also believed to be allowable. Removal of the rejections and allowance of claims 22-26 is respectfully requested.

§ 102(b) in view of the Japanese Application

Claim 15 was rejected under 35 U.S.C. § 102(b) as being anticipated by Japanese Patent Application (JP 10-266510). The Examiner indicated that the preamble limitation, "for use with a hospital bed" is an intended use and no patentable weight was given to the preamble. Applicants respectfully point out that the "for use with a hospital bed" limitation was removed in the Response to Office Action of 3 May 2005. Additionally, JP 10-266510 does not disclose "the body being able to flex so as to alter the size of the notches when the siderail moves during articulation of the articulatable patient support" as required by amended claim 15.

Therefore, Applicants believe that amended claim 15 is in condition for allowance with respect to JP 10-266510. Removal of the rejection and allowance of claim 15 is respectfully requested. If the Examiner should disagree with the Applicants' arguments, the

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Examiner is asked to kindly point out with particularity where the limitation is expressly disclosed.

§ 103(a) in view of Gordon in view of Pierzina

Claims 27-29, were rejected under 35 USC § 103(a) as being unpatentable over U.S. Patent No. 6,038,721 to Gordon (hereinafter "Gordon"), in view of U.S. Patent No. 6,279,795 to Pierzina (hereinafter "Pierzina").

Applicants respectfully submit that the combination of Gordon and Pierzina does not support the Examiner's rejection of amended claims 27-29 under 35 U.S.C. § 103(a). The case law is clear that in order for the U.S. Patent and Trademark Office to "establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations." Manual of Patent Examining Procedure (M.P.E.P.) Section 2143.

The Examiner stated that Gordon "fails to disclose or fairly suggest the siderail covering having a plurality of triangular apertures being adjustable with the articulation of the first and second sections of the siderail portion." Applicant respectfully points out that Gordon describes a split rail bed guard system for a hospital bed and Pierzina describes a shoulder strap for carrying a load (such as a gun, as shown in Fig. 1 of Pierzina.) Pierzina's padded shoulder strap is provided to distribute the load (i.e. the weight of the gun) over the strap and padding, and prevent the strap from sliding off the shoulder. Nothing in Pierzina even hints at using the disclosed shoulder strap as a covering for a patient support siderail as claimed. Furthermore, neither Gordon nor Pierzina discuss or suggest a body that is flexible during articulation of a patient support as claimed.

Not only are the two references non-analogous art, but there is no disclosure, motivation or suggestion in either reference or in the knowledge generally available to those skilled in the art that would lead one skilled in the art to combine it with the other. Without more, the combination of Gordon and Pierzina can only be made with the benefit of the teachings of Applicants' specification. Such use of Applicants' disclosure is improper hindsight reasoning. Accordingly, the Examiner has failed to meet his burden of establishing a *prima facie* case of obviousness under 35 U.S.C. §103(a). If the Examiner maintains his position that the combination of Gordon and Pierzina is proper in this instance, Applicants

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respectfully request the Examiner to identify with particularity where the teaching, suggestion or motivation to combine these references may be found.

Final Remarks

In view of the foregoing amendments and remarks, Applicants submit that the application is now in condition for allowance. A Notice of Allowance is earnestly solicited.

If necessary, Applicants request that this Response be considered a request for an extension of time for a time appropriate for the response to be timely filed. Applicants request that any required fees needed beyond those submitted with this Response be charged to the account of Bose McKinney & Evans LLP, Deposit Account Number 02-3223.

Respectfully submitted,

BOSE McKINNEY & EVANS LLP



Brion G. St. Amour
Reg. No. 55,640

Indianapolis, Indiana
(317) 684-5416

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